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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,282	04/08/2004	Steven R. Benson	31,625-01RE	1036

7590 07/25/2006

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EXAMINER

CHARLES, MARCUS

ART UNIT	PAPER NUMBER
3682	

DATE MAILED: 07/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/821,282	Applicant(s) BENSON, STEVEN R.	
	Examiner Marcus Charles	Art Unit 3682	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This action is responsive to the amendment filed 07-21-2005, which has been entered.

Claims 1-21 are currently pending.

Terminal Disclaimer

1. The terminal disclaimer filed on 07-21-2005 disclaiming the terminal portion of any patent granted on this application, which would extend beyond the expiration date of patent application no. 5,721,681 has been reviewed and is accepted. The terminal disclaimer has been recorded.

2. The reissue oath/declaration filed with this application is defective (see 37 CFR 1.175 and MPEP § 1414) because of the following:

3. The reissue oath/declaration filed with this application is defective because the declaration does not adequately identify the application and the error, which is relied upon to support the reissue application, is not an error upon which a reissue can be based. See 37 CFR 1.175(a)(1) and MPEP § 1414.

4. In addition, "Review and understanding" applies to the application and not the patent. The oath or declaration must state the person signing has reviewed and understand the content of the specification, including the claims, as amended by any amendment specifically referred to in the oath or declaration as required by CFR 1.63 (b)(2).

5. Applicant needs to provide support for all the changes (including added claims).

6. For any error corrected, which is not covered by the oath or declaration, (i.e. error corrected after filing the oath and declaration currently in the reissue application, applicant MUST submit a supplemental oath or declaration (a catch up oath or declaration). (37 CFR 1.175 (b)(1). A supplement disclosure is also needed for the amendment made after filing

7. The reissue oath/declaration filed with this application is defective because it fails to contain a statement that all errors, which are being corrected in the reissue application up to the time of filing of the oath/declaration, arose without any deceptive intention on the part of the applicant. See 37 CFR 1.175 and MPEP § 1414. In addition applicant fails to specify the errors. The copy of the consent of the parent reissue application does not indicate that the assignee has consented to the addition of the new error correction of the continuation reissue application to the original patent. Presumably, a new correction has been added, since the parent reissue application is still pending.

8. Claims 1-21 are rejected as being based upon a defective reissue declaration under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175.

The nature of the defect(s) in the declaration is set forth in the discussion above in this Office action.

9. Claims 8-21 are rejected under 35 U.S.C. 251 as being improperly broadened in a reissue application made and sworn to by the assignee and not the patentee. A claim is broader in scope than the original claims if it contains within its scope any conceivable product or process which would have infringed the original patent. A claim


Art Unit: 3682

is broadened if it is broader in any one respect even though it may be narrower in other respects.

10. Claim 8-21 are rejected under 35 U.S.C. 251 as being broadened in a reissue application filed outside the two year statutory period. The broaden claim is filed more than two years from the original patent and applicant has failed to include an oath or declaration indicating a desire to seek broaden claims within two years of the patent bars any subsequent attempt to broaden the claims after the two year limit. A claim is broader in scope than the original claims if it contains within its scope any conceivable product or process which would not have infringed the original patent. A claim is broadened if it is broader in any one respect even though it may be narrower in other respects.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marcus Charles whose telephone number is (571) 272-7101. The examiner can normally be reached on Monday-Thursday 7:30 am to 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ridley Richard can be reached on (571) 272-6917. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.


Marcus Charles
Primary Examiner
Art Unit 3682
July 24, 2006